

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GLORIA J. NIPPER (claiming as widow of MAX R. NIPPER) and
DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION
ADMINISTRATION, Los Angeles, Calif.

*Docket No. 97-1653; Submitted on the Record;
Issued May 6, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the employee's death was causally related to his July 2, 1975 accepted employment conditions, entitling appellant to widow's benefits.

On July 2, 1975 the appellant, then a 37-year-old air traffic controller, sustained a myocardial infarction as a result of his federal employment. He underwent coronary artery bypass surgeries in July 1975, March 1983 and January 1992. Complications included cardiac dysrhythmia in 1992 and congestive heart failure. On March 5, 1994 the employee died as a result of prostate cancer and metastatic cancer of the lung and bone.¹ The employee's death certificate indicated "Ischemic Heart Disease" under other significant conditions.

On April 2, 1996 the employee's wife, appellant, filed a Form CA-5 claim for survivors benefits.

In support of her request appellant submitted an April 8, 1996 report from the employee's treating physician, Dr. Kenneth B. Desser, a Board-certified cardiologist, which stated that the employee's death resulted from his severe arteriosclerotic heart disease. Dr. Desser opined that the employee's severe coronary artery disease prevented the employment of steroid treatments vital to slowing the progression of the cancer. He opined that hormonal treatment and other cancer chemotherapy was not employed due to the detrimental side effects which would have been too much for the employee's weakened heart to withstand.

On April 23, 1996 the Office medical adviser reviewed the evidence of record and opined that the employee's death certificate indicated that he died of metastatic disease of the lungs and

¹ Appellant's carcinoma of the prostate was identified in 1986; he underwent a radical prostatectomy with pelvic node dissection in 1986, an orchiectomy in 1990, and a transurethral resection for urethral obstruction by cancer in 1992. Radiation therapy to the prostate, pelvis and periaortic nodes was performed in 1993. Hospitalization on February 21, 1994 related to pulmonary symptoms at which time chest x-rays revealed diffuse pulmonary nodules consistent with metastatic disease.

bones due to carcinoma of the prostate, and that it was unlikely that, absent the history of heart disease, there would have been a significantly different outcome.

By decision dated May 13, 1996, appellant's claim was denied on the basis that the employee's death was not causally related to the accepted work conditions. The Office found that appellant did not meet her burden of proof to establish her claim.

Thereafter appellant requested a review of the written record. In support appellant submitted a June 3, 1996 report from Dr. Arthur Fishman, a Board-certified urologist, which stated that in view of the employee's cardiac status they were never able to use hormonal therapy, *i.e.*, stilbestrol. Dr. Fishman stated that the risk of emboli was too great in view of the employee's cardiovascular problems, and noted that Dr. Jeff Isaacs was the employee's oncologist "who had to use other forms of chemotherapy rather than hormonal ablation to control his prostate cancer." The Board notes that the appellant had altered Dr. Fishman's report by typing "wait and see and shrinking with radiation rather than" for the original "chemotherapy rather than" in the above-noted quote. The appellant also typed two notes regarding the changes at the bottom of the report.²

On September 5, 1996 the hearing representative set aside the May 13, 1996 decision and remanded the case for further development, finding that a conflict existed in the medical opinion evidence between the Office medical adviser and the decedent's attending physicians.

Upon remand, the Office created a statement of accepted facts and referred the record to Dr. Maurice Eliaser, Jr., a Board-certified cardiologist, to resolve the existing conflict.

By report dated December 23, 1996, Dr. Eliaser reviewed the employee's factual and medical history and the medical evidence of record, the death certificate, and appellant's contentions, and he noted that the employee's primary cause of death was metastatic cancer of the lungs and bone due to prostatic cancer, and that ischemic heart disease was another significant condition. He noted that nowhere in the medical records was there any indication that the management of the prostatic carcinoma was altered because of the decedent's cardiovascular condition. In contrast, Dr. Eliaser noted that the third cardiac surgery was selected and performed because of the employee's contraindication for heart transplantation due to diabetes and prostatic cancer. He noted that Dr. Fishman's report had been altered by the appellant, and noted that there were no reports in any of the attached documents to suggest that chemotherapy for the tumor had ever been considered as a therapeutic option during the decedent's lifetime. Dr. Eliaser noted that the overall urologic therapeutic sequence was aggressive, including a radical prostatectomy in 1986 and bilateral orchiectomy four years later. He explained that it was generally medically accepted that these procedures would have significantly reduced, if not obviated, the need for estrogenic a/o gonadotropin-releasing hormone analog therapy. Dr. Eliaser opined that the accepted employment-related heart condition neither caused nor accelerated the employee's death to any significant degree. He explained:

² Appellant also submitted cardiac-related medical reports dating from 1986 to the employee's death, articles from publications and the internet regarding estrogen therapy in prostate cancer and drug information printouts, itemized funeral expenses and medical bills. However, the Board has held that newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing causal relationship as such materials are of general application and are not determinative as to specific issues in particular cases; *see William C. Bush*, 40 ECAB 1064, 1075 (1989).

“The overall clinical management of the urologic problem was sufficiently aggressive to have precluded any major indication for hormonal type therapy. The final hospitalization indicated that the congestive heart failure was mild which would, therefore, not, *per se*, have constituted a contraindication to most forms of any chemotherapy designed for the metastatic carcinoma that additionally involved the lungs.”

By decision dated January 10, 1997, the Office rejected appellant’s claim finding that the weight of the medical evidence of record established that the employee’s death was not due to his accepted cardiac condition in any way. The Office found that the existing conflict in medical opinion evidence of record was resolved by the thorough and well-rationalized report of Dr. Eliaser, who explained that the employee’s death was due to metastatic carcinoma of the lungs and bones due to prostate cancer.

The Board finds that the employee’s death was not causally related to his July 2, 1975 accepted employment conditions, such that appellant is not entitled to widow’s benefits.

Appellant has the burden of establishing by the weight of the reliable, probative, and substantial medical evidence that the employee’s death was causally related to an employment injury or to factors of his federal employment. As part of this burden, appellant must submit a rationalized medical opinion, based upon a complete and accurate factual and medical background, showing a causal relationship between the employee’s death and an employment injury or factors of his federal employment. Appellant’s unsupported belief is insufficient to establish causal relationship.³ Causal relationship is medical in nature and can be established only by medical evidence.⁴

In the instant case, appellant submitted some unrationalized medical evidence supporting that the employee’s death from cancer was hastened due to the inability to use steroid therapy to slow down the cancer due to his employment-related cardiac conditions. The Office medical adviser, however, reviewed the medical reports of record and opined that it was unlikely that, absent the history of heart disease, there would have been a significantly different outcome in the employee’s case. She reiterated that the cause of the employee’s death was metastatic disease of the lungs and bone due to carcinoma of the prostate.

The Federal Employees’ Compensation Act, at 5 U.S.C. § 8123(a), in pertinent part, provides: “If there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.” In this case, the Office properly determined that a conflict existed between appellant’s physician and the Office medical adviser, and appropriately referred the case to an impartial medical specialist.

Dr. Eliaser opined, in a thorough and well-rationalized report, that the accepted employment-related heart condition neither caused nor accelerated the employee’s death to any significant degree.

³ See *Leonora A. Bucco (Guido Buco)*, 36 ECAB 588 (1985); *Lorraine E. Lambert (Arthur R. Lambert)*, 33 ECAB 1111 (1982).

⁴ *Mary J. Briggs*, 37 ECAB 578 (1986); *Ausberto Guzman*, 25 ECAB 362 (1974).

The Board has frequently explained that, when there exist opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁵

In this case, Dr. Eliaser's report was based upon a complete and accurate factual and medical history, and was thorough and well rationalized, such that it was properly accorded that special weight. As a result, his report constitutes the weight of the medical opinion evidence of record and establishes that the employee's death was not due to or caused or accelerated by his employment-related cardiac problems.

Accordingly, the decisions of the Office of Workers' Compensation Programs dated January 10, 1997 and May 13, 1996 are hereby affirmed.

Dated, Washington, D.C.
May 6, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁵ *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).